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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of LOREN W. and JANE C. LILLESTRAND.	
LOREN W. LILLESTRAND, Appellant, v. JANE C. LILLESTRAND, Appellant.	E042625 (Super.Ct.No. SBFSS44849) OPINION

APPEAL from the Superior Court of San Bernardino County. Michael J. Torchia, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed and remanded with directions.

Ward & Ward and Alexandra S. Ward for Appellant Jane C. Lillestrand.

Granowitz, White and Weber, Richard A. Granowitz and Steven R. Weber for Appellant Loren W. Lillestrand.

Jane Lillestrand appeals an order denying her motion for an increase in spousal support and reducing her spousal support based on her former husband's motion for reduction or termination of spousal support. Loren Lillestrand appeals the same order, asserting that the court abused its discretion by merely reducing spousal support rather than terminating it as he had requested in his motion.

As the issues are framed on appeal by both parties, the central issue is Loren's contention, and the trial court's finding, that Jane failed to make reasonable efforts to become self-supporting. Jane contends, in part, that the court failed to consider and apply all of the appropriate support factors itemized in Family Code section 4320. We agree, and we will reverse the judgment and remand for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

Loren and Jane Lillestrand were married for 29 years when Loren filed a petition in 1999 to dissolve the marriage. Jane was 19 when they married in 1970. In 1971, she completed her bachelor's degree in elementary and early childhood education at the University of North Dakota. She obtained a license to teach in North Dakota and several surrounding states, but she never took a teaching job and did not maintain the license. For the first 17 years of their marriage, Loren worked for Campus Crusade for Christ. A condition of his employment was that Jane could not work outside the home, except to perform some functions in support of Loren's career, which she did. After Loren left that job, he first worked in selling life insurance and mutual funds. In 1989, he opened a consulting business which ultimately became very lucrative. In 2002, the parties

stipulated that Loren's income was $27,000 a month. They stipulated that as of the date of filing the modification motion, his income had increased by about $5,000 a month.

Even after leaving Campus Crusade for Christ, Loren did not want Jane to work. They had six children, and they agreed that her role should be that of homemaker. Accordingly, during the marriage, Jane never worked outside the home, with the exception of selling one life insurance policy during the time that Loren worked in that field and assisting him in some aspects of running a nonprofit corporation they had formed. Along with Loren and two other couples, however, Jane did assist in founding a Christian elementary school, Banner Elementary. She designed the Bible curriculum for the school, found the location for the school, and assisted in finding teachers for the school. She served on the school's board of directors from 1980 until 2005.

In 1987, Jane had begun a small home-based business, called Warmtak, making and selling holiday and general gift items. She made little money through the business, which she operated as a hobby while her youngest children were small, but by the time of the hearing which is the subject of this appeal, she had developed a significant wholesale client base. She had also expanded her product line and was beginning to market through retail outlets as well as wholesale.

Loren filed a petition for dissolution on May 24, 1999. A judgment of dissolution, status only, was entered on December 22, 1999. All other issues were reserved. On October 5, 1999, Jane filed an order to show cause (OSC) concerning custody, support and visitation of the two children, Quinn and Eric, who were still minors, and concerning

spousal support. On July 17, 2000, the parties stipulated to temporary orders for spousal and child support and for custody and visitation.

A hearing on the OSC commenced on March 19, 2002. That day, the parties executed a stipulation for division of property. On March 20, 2002, they executed a stipulation resolving support, custody and visitation. The two stipulations were entered as a judgment on July 31, 2002.

The March 20 stipulation contains the provisions which are pertinent to the issues raised on appeal. It provides that Loren would pay $4,000 a month in child support for Quinn and Eric. Upon Quinn becoming no longer legally entitled to support, child support for Eric would be $2,500 a month. The stipulation also provides that Loren would pay $4,000 a month in spousal support commencing April 1, 2002. On April 1, 2003, the amount would be reduced to $3,000 a month. Spousal support would continue until Jane remarried, until the death of either party or further order of the court. The stipulation recited that the amounts of child and spousal support were based on Loren having self-employment income of $27,200 a month and Jane having income of $1,500 a month, and Loren paying $325 a month for health insurance and Jane paying $700 a month for health insurance. The stipulation, which was incorporated in the judgment, included the following paragraph: "The Respondent [Jane] is hereby give [*sic*] a 'Gavron' warning.[1] It is the goal that a supported party shall be self-supporting within a reasonable period of time." The judgment form contained a similar warning.

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[1] This refers to *In re Marriage of Gavron* (1988) 203 Cal.App.3d 705 (*Gavron*).

On June 25, 2004, Jane filed an OSC to modify child and spousal support to a "reasonable" amount, conforming with the marital standard of living for herself and Eric, the sole remaining minor child. Loren filed a response, requesting that Jane's spousal support be reduced or terminated, based on her failure to make reasonable efforts to become self-supporting. After a hearing conducted over the course of nine months, the court-ordered child support increased for the period between the date the motion was filed and the date Eric graduated from high school. The court found that although Jane had increased her monthly income from her home business, she had not made reasonable good-faith efforts toward becoming self-sufficient. The court reduced her spousal support from $3,000 to $2,000 a month and retained jurisdiction; it did not set a date for termination of spousal support. The court awarded Jane a portion of her legal fees.

Jane filed a timely notice of appeal; Loren filed a timely cross-appeal.

LEGAL ANALYSIS

THE *GAVRON* WARNINGS WERE NOT INADEQUATE AS A MATTER OF LAW

It is the policy of this state that a person who is receiving postdissolution spousal support make reasonable efforts to become self-supporting within a reasonable time. (*In re Marriage of Pendleton and Fireman* (2000) 24 Cal.4th 39, 53; Fam. Code, § 4320, subd. (*l*).)[2] A supported spouse's failure to make good-faith efforts to become self-supporting can constitute a change in circumstances which warrants reduction or termination of spousal support if, and only if, the supported spouse was given reasonable

[2] All statutory citations refer to the Family Code.

advance warning that after an appropriate period of time he or she was expected to become self-sufficient or face onerous legal and financial consequences. (*Gavron, supra,* 203 Cal.App.3d at p. 712; *In re Marriage of Schmir* (2005) 134 Cal.App.4th 43, 55.)

Here, both the parties' written stipulation and the judgment form contain a so-called *Gavron* warning. The stipulation states, "Respondent is hereby give [*sic*] a 'Gavron' warning. It is the goal that a supported party shall be self-supporting within a reasonable period of time." The judgment states, "It is the goal of this state that each party shall make reasonable good faith efforts to become self-supporting as provided for in Family Code section 4320. The failure to make reasonable good faith efforts may be one of the factors considered by the court as a basis for modifying or terminating spousal support." Jane does not dispute that she was aware of her obligation to make reasonable efforts to become self-supporting; she testified that she was aware that she was expected to become self-supporting and that she had been attempting to do so. However, she contends that these warnings are inadequate as a matter of law because (1) they do not define "reasonable good faith efforts" and provide no guidance as to what types of efforts would be viewed as "reasonable" or "good faith"; (2) they fail to disclose that she might need to seek further education or retraining as part of her effort to become self-supporting; and (3) they fail to disclose that she might be subject to specific time limits for becoming self-sufficient. She contends that it was an abuse of discretion for the court to reduce her spousal support without having given her advance warning, over and above the written warnings, which did provide the guidance she describes.

Loren contends that Jane has forfeited review of this issue because she did not assert it below. Jane responds that because an effective *Gavron* warning is a prerequisite to a reduction of spousal support based on the failure of the supported spouse to make sufficient efforts toward becoming self-sufficient, the court's order was necessarily an abuse of discretion in the absence of a determination that the *Gavron* warning was sufficient.[3]

Ordinarily, we do not address issues which could have been litigated but were not, unless they are questions of pure law. (*Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 6.) Jane's assertion is that the court could not, as a matter of law, exercise its discretion to reduce her spousal support without first having given a *Gavron* warning based on the court's own assessment of the circumstances of the case. Jane is correct that a court must exercise its discretion in accordance with applicable legal principles: "The scope of discretion always resides in the particular law being applied; action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such [an] action an abuse of discretion. [Citation.]" (*Choice-in-Education League v. Los Angeles Unified School Dist.* (1993) 17 Cal.App.4th 415, 422.) Whether the court applied the correct legal principles in exercising its discretion is a question of law. (*KB Home v. Superior Court* (2003) 112 Cal.App.4th

[3] Modification of spousal support is reviewed for abuse of discretion. (*In re Marriage of Schmir, supra,* 134 Cal.App.4th at p. 47.)

1076, 1083.) Accordingly, we will review this contention, even though it was not raised below.

Jane does not cite any authority that the trial court must address the sufficiency of a *Gavron* warning which was undisputedly given, when the supported spouse did not contend that the warning was not sufficient. Moreover, although Jane cites several cases, including *In re Marriage of Shaughnessy* (2006) 139 Cal.App.4th 1225, in which the court quite explicitly stated its expectations as to what would constitute reasonable efforts on the part of the supported spouse (see *id*. at pp. 1248-1250), she does not cite any case which holds that a *Gavron* warning is effective only if it is that detailed and explicit. *Gavron* itself merely requires a warning which is sufficient to alert the supported spouse that he or she must make reasonable efforts to achieve self-sufficiency "or face onerous legal and financial consequences." (*Gavron*, *supra*, 203 Cal.App.3d at p. 712.) Section 4330, subdivision (b) provides only that if the court determines, in the context of a lengthy marriage, that a *Gavron* warning is warranted, it may "advise the recipient of support that he or she should make reasonable efforts to assist in providing for his or her support needs." In the absence of any decisional or legislative support for Jane's position that a more expansive and detailed warning is required, we are not persuaded that the *Gavron* warnings Jane received were inadequate. Consequently, we cannot say that the court erred by failing to determine, without being asked to do so, whether the warnings were adequate to put Jane on notice of her obligations.

Jane also contends that the court was not permitted to reduce her spousal support without first determining whether her efforts at becoming self-supporting were reasonable, informing Jane as to the court's expectations and giving her a warning that it would consider reducing spousal support at some point in the future. Jane did receive a warning that a reduction in spousal support might result if she failed to make reasonable efforts to become self-supporting. By stipulating to spousal support with that warning, and stipulating that a court could order a modification in spousal support, however, Jane in effect stipulated that questions as to the reasonableness of her efforts could be submitted to a court and that the court could determine that a reduction in support was warranted. Consequently, the court was not required to give her an additional prior warning.

This situation is quite different from that in *In re Marriage of West* (2007) 152 Cal.App.4th 240, on which Jane relies. In that case, in ruling on a motion to modify spousal support, the trial court found that the wife had made reasonable efforts to become self-supporting by working as realtor, even though her earnings were necessarily limited in the first few years of that endeavor. However, the trial court reduced her spousal support anyway, on the ground that she had failed to invest certain assets. (*Id.* at pp. 244-246, 249-251.) The Court of Appeal held that it was improper to do so, since there had been no prior warning that a failure to make investments might result in a reduction of spousal support. (*Id.* at p. 251.) Although the court did not discuss it, we presume that it concluded that there was no reason for the wife to understand the *Gavron* warning to

encompass efforts to derive income from assets as well as efforts to obtain income through employment. Here, there is no question that Jane understood that she was expected to find employment or generate income through self-employment, and the *Gavron* warning explained the potential consequences if she failed to make reasonable efforts to do so.

In her reply brief, Jane also makes the related contention that in hearing the modification motion, the trial court should have considered whether the *Gavron* warning was valid, and that once it concluded that the warning was not sufficient to alert Jane to what she was expected to do to meet the goal of self-sufficiency, the court should have determined whether a *Gavron* warning was appropriate at all. Once it concluded, "as it had to," that the warning was unenforceable, the trial court should have engaged in the exercise of discretion required by Family Code section 4330, subdivision (b), to determine whether Jane should be given a *Gavron* warning at all.[4] Then, if the trial court

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[4] A *Gavron* warning is discretionary in the context of a lengthy marriage because under some circumstances the supported spouse has little realistic prospect of ever becoming self-supporting, as where the supported spouse has never worked during the marriage and has insufficient education or training to be employable in a capacity which would allow for self-sufficiency. If the court determines that the supported spouse in a lengthy marriage cannot reasonably be expected to become self-supporting, the *Gavron* warning may be dispensed with. (See Assem. Com. on Judiciary, Analysis of Assem. Bill No. 391 (1999 Reg. Sess.) Apr. 27, 1999; see *In re Marriage of Morrison* (1978) 20 Cal.3d 437 (*Morrison*).) Accordingly, section 4330, subdivision (b) provides: "When making an order for spousal support, the court may advise the recipient of support that he or she should make reasonable efforts to assist in providing for his or her support needs, taking into account the particular circumstances considered by the court pursuant to Section 4320, unless, in the case of a marriage of long duration as provided for in Section 4336, the court decides this warning is inadvisable."

determined that the warning should be given, it should have advised Jane of her obligation to make reasonable efforts to assist in providing for her support needs, based on the court's own assessment of what efforts the court would deem reasonable, taking into consideration the particular circumstances, as required by section 4330, subdivision (b). At oral argument, she further contended that the trial court should have independently determined whether a *Gavron* warning was appropriate before accepting the parties' stipulation.

We decline to address an issue raised for the first time at oral argument. (See *Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4th 215, 226 [Fourth Dist., Div. Two].) However, as we discuss below in the context of Jane's argument that the trial court failed to consider all of the applicable support factors in reaching its decision, we agree that in ruling on a request for modification of spousal support where there is an existing *Gavron* order, the court must not only consider whether the supported spouse has made reasonable efforts to become self-supporting but must also, if the circumstances warrant it, consider whether it is reasonable to expect that spouse ever to become fully self-supporting.

THE COURT'S FAILURE TO CONSIDER AND APPLY ALL APPROPRIATE STATUTORY SUPPORT FACTORS WAS AN ABUSE OF DISCRETION

Jane contends that the trial court abused its discretion because it failed to weigh and consider the factors specified in section 4320 in deciding to reduce her support.[5]

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[5] Eliminating those factors which clearly do not apply in this case, section 4320 provides as follows:

"In ordering spousal support under this part, the court shall consider all of the following circumstances:

"(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:

"(1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.

"(2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.

"(b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.

"(c) The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.

"(d) The needs of each party based on the standard of living established during the marriage.

"(e) The obligations and assets, including the separate property, of each party.

"(f) The duration of the marriage.

"(g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.

"(h) The age and health of the parties. [¶] . . . [¶]

"(j) The immediate and specific tax consequences to each party.

"(k) The balance of the hardships to each party.

"(l) The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in Section 4336, a 'reasonable period of time' for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of

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In ordering spousal support, the trial court must consider and weigh all of the circumstances enumerated in section 4320, to the extent that they are relevant to the case before it, with the goal of accomplishing substantial justice for the parties. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 302-303, 304 (*Cheriton*).) The court has broad discretion with respect to weighing the applicable factors and determining the appropriate weight to accord to each. However, the court does not have the discretion to ignore any relevant circumstance enumerated in section 4320; rather, the trial judge must recognize and *apply* each applicable statutory factor. Failure to do so is reversible error. (*Cheriton*, at p. 304.)

Here, the court acknowledged that it was required to consider and weigh "all of the appropriate support factors" itemized in section 4320. The court referred to the evidence that Loren's income had increased by about $5,000 a month while his child support obligation had ceased, and that Jane's expenses and income had both increased. It also described the high standard of living the parties enjoyed during the later stages of their marriage while Jane was a "'stay at home' mom rearing the parties' children." The court then stated that "If the inquiry ceased here, the court might very well deem the existing support award inadequate, (although, as the court noted, [Jane] agreed to the existing order). However, as indicated, standard of living is only one factor to consider,

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the other factors listed in this section, Section 4336, and the circumstances of the parties. [¶] . . . [¶]

"(n) Any other factors the court determines are just and equitable."

and its significance decreases in post-judgment modification proceedings. Other factors must be considered, in light of the oft-stated and significant criteria that a supported spouse become self-sufficient. In that regard, [Jane's] earning capacity, her need for support and her diligence in attaining self-sufficiency must be scrutinized."

The court found Jane's diligence wanting because "with a minimum of effort, [she] could have received her teaching credential by this date." The court recognized that Jane "is now in her 50's and that she has not worked in the education field for many years. However, she felt comfortable enough in this area of endeavor to participate in the Banner [School] project and could have at least attempted to sit for the necessary classes or programs to pursue a credential. Further, according to the expert testimony, there is still an employment market for teachers in this area of the state." The court went on to say that Jane is entitled to pursue any career she chooses, but that the issue is whether she adhered to the *Gavron* warning and attempted to become self-sufficient. It concluded that she had not made the requisite effort and that there was no basis for an elevated award of spousal support. Based on the same factors, as well as the fact that Jane's monthly income from her home business had increased (by an amount the court did not specify), the court reduced her spousal support from $3,000 to $2,000.

The judgment reflects consideration of a number of the pertinent section 4320 factors. However, the premise of Loren's defense to Jane's request for increased support and of his affirmative request for reduction or termination of support was Jane's alleged failure to make reasonable efforts to become self-supporting. This was also the

dispositive factor as far as the court was concerned. Consequently, the application of the statutory factors relating to Jane's ability to become self-supporting and the decisions she made in that regard were crucial to a reasoned decision to increase or reduce her spousal support. In order to apply those factors appropriately, it was necessary to view Jane's decision not to pursue a teaching career based on the circumstances that existed, as we discuss below, in 1999 and 2000, when Jane made that decision.[6] The judgment reflects that the court did not consider the circumstances as they existed at that time to determine whether Jane's decision to pursue her home business instead constituted a reasonable effort at becoming self-supporting. Under the circumstances of this case, this was an abuse of discretion.

Jane explained her decision not to pursue a teaching career as follows. In 1999, when she and Loren separated, she underwent a vocational analysis, at Loren's request. She received the vocational analyst's report, which suggested various employment options, including teaching, in August 1999. At that time, the two youngest children,

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[6] At oral argument, Loren contended that the trial court could not properly consider these circumstances because they predated the parties' 2002 stipulation and judgment. Consequently, he argued, anything that happened in 1999 and 2000 did not constitute a change in circumstances which might justify modification of spousal support. However, we are not reviewing an order granting Jane's motion for increased support; rather, we are reviewing an order reducing support based on Loren's motion to reduce or terminate support. The burden of justifying reduction in spousal support based on the supported spouse's alleged failure to make reasonable efforts to become self-supporting is on the party seeking reduction. (*Gavron, supra,* 203 Cal.App.3d at pp. 711-712.) In order to determine whether Jane's efforts to become self-supporting were or were not reasonable, it was obviously essential that the court consider the circumstances surrounding her efforts to do so.

Eric and Quinn, who lived with her, had completed sixth and eighth grade, respectively. During the following school year, Quinn was suspended from school for drinking alcohol at school. She was told that he would be suspended from the district if there was another incident. Later that year, he was picked up twice by the police on drug charges. Jane testified that she decided that it was more important for her to be at home, particularly when the boys came home from school, in order to supervise them and minimize their opportunities to get into trouble. She was aware of studies that indicated that children left unsupervised after school were most likely to get into trouble. She testified that if she began working immediately under an emergency teaching credential, as the vocational assessment report suggested, she would have been required to work during the day and go to school at night. Under those circumstances, she would obviously rarely be home to supervise her sons. If, on the other hand, she worked at her home business, she would be able to be at home in the afternoons and evenings.

Although the judgment refers to the fact that at the time of the separation, two of the parties' children were minors and were living with Jane, it does not address the effect of Jane's need to work on the minor children living at home and contains no reference whatsoever to Jane's testimony concerning this reason for not pursuing a teaching career. (§ 4320, subd. (g) ["The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party."].) The court's failure to consider and weigh that factor was an abuse of discretion. (*Cheriton*, *supra*, 92 Cal.App.4th at p. 304.)

There was other evidence the court should have considered as well in determining whether, under section 4320, subdivision (*l*) and section 4330, subdivision (b), Jane's efforts were or were not reasonable. Jane testified that she considered teaching as an employment option when she and Loren separated. The vocational analyst told her that she could take the CBEST test and become a substitute teacher, or she could get an emergency credential and begin teaching immediately while she took classes she needed in order to get a permanent credential. However, the vocational analyst told her that most substitute teaching jobs and teaching jobs available under an emergency credential would pay $21,000 to $23,000 annually.[7] Similarly, a job teaching at Banner School, which did not require a credential, would pay about $21,000. Warmtak was not producing much income at that time, since Jane had operated it as a hobby during the marriage. However, by 2002, the parties stipulated that it produced $1,500 a month in income ($18,000 a year), and the court found that her income had increased by the time of the modification proceedings, although it did not specify an amount.[8] Jane testified that she was by then

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[7] The 1999 vocational analyst's report was marked as Exhibit 18 but was apparently not admitted into evidence. A different vocational evaluator, Barbara Leis, testified about the contents of the 1999 report. The report apparently showed that in 1999, substitute teachers in the local area could earn from $21,000 to $24,000 after passing the CBEST test, subject to the limitation that there is no guarantee that work will be available every day, and that local school districts were paying starting salaries of approximately $31,000 to teachers who obtained an emergency credential. The "salary potential" for fully credentialed teachers was approximately $47,000.

[8] Loren asserts that the evidence shows that Warmtak has never made a profit. As Jane points out, like many of Loren's factual assertions, this is not supported by a citation to the record. Consequently, we may disregard it. (See Cal. Rules of Court, rule

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able to apply approximately $2,000 from her proceeds from Warmtak to her monthly expenses.

Jane also spoke to someone in the education department at the University of Redlands and learned that it would take her about two years to get her credential if she was working at the same time. At the time, it was possible to get an emergency teaching credential. However, the person she spoke to at the university said that although there were a few jobs for emergency credentialed teachers, there were none that she knew of in the local area. Consequently, although it was possible that Jane could get such a job, her prospects were at best uncertain. Finally, Jane also investigated to determine what she could hope to get as a pension if she went into teaching. In August 1999, Jane was 49 years old. She learned that if she began teaching at the age of 52 and worked until age 63 or 64, she would get a pension of $620 a month. She felt that she had greater earning potential if she developed her home business because there was no limitation on how long she could continue to work at it.

The court did not consider, based on this evidence, whether it was reasonable for Jane to conclude that she had the ability to earn as much through Warmtak as she could expect to earn by teaching or possibly more than she could expect to earn by teaching. The fact that by the time of the hearing she was *not* earning more through Warmtak than she would have been if she had obtained her teaching credential and had gotten a

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8.204(a)(1)(C).) In any event, whether Warmtak produced a profit for tax purposes is not the same question as whether it produced income.

teaching job is not relevant to the question whether Jane made a reasonable decision in 1999 or 2000, when she decided not to get her teaching credential. A decision may be reasonable at the time it is made, even if it did not turn out as well as hoped.

The court also did not consider whether it is reasonable to expect Jane ever to become fully self-supporting, given her age and lack of work experience resulting from decisions Jane and Loren made during their marriage. It is well-recognized that following dissolution of a long-term marriage, a spouse who has never worked outside the home may never be able to become fully self-supporting. (*Morrison, supra,* 20 Cal.3d at p. 453.) For these reasons, in ordering spousal support, a court must consider the marketable skills of the supported party (§ 4320, subd. (a)(1)) and the extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties (§ 4320, subd. (a)(2)). Here, the court utterly disregarded these factors—including the facts that for the first 17 years of the marriage Jane was *precluded* from working except in support of Loren's employment with Campus Crusade for Christ, and that after Loren ceased working for Campus Crusade for Christ, Jane and Loren agreed that she should devote herself to raising their six children—and appeared to assume that because Jane had a 30-year-old degree in education and experience in setting up a school (but no experience in teaching), it is reasonable to expect her to become self-supporting as a teacher in her mid-50's. The court also did not consider whether it was reasonable to conclude, as Jane did, that she might have difficulty getting a job, since she

would be competing with people in their twenties for entry-level jobs and that after working for 10 or 12 years, she would get an extremely minimal pension.

The fact that a *Gavron* warning had already been given did not relieve the court of the obligation to consider and weigh these factors. A self-support provision, whether in a judgment or in a marital settlement agreement, is not set in stone, if the court has retained jurisdiction over spousal support. (*Gavron, supra*, 203 Cal.App.3d at pp. 711-712.) Circumstances can change, and events which occur after the execution of the agreement can demonstrate that a supported spouse cannot achieve full financial independence, despite his or her best efforts. (See, e.g., *In re Marriage of Aninger* (1990) 220 Cal.App.3d 230, 240 (*Aninger*), overruled on other grounds by statute as noted in *In re Marriage of O'Connor* (1997) 59 Cal.App.4th 877, 882 [marital settlement agreement which provided for orders decreasing support at specified intervals rested on the assumption that the supported spouse would have an increased ability to provide for her own support at the time of each step-down; if the assumption "failed to materialize on schedule" despite the reasonable efforts of the supported spouse, the court was permitted to find a change of circumstances justifying modification of the support order].) In particular, in the case of a spouse who has not worked during a lengthy marriage, a directive to use reasonable good faith efforts to become self-supporting is at best aspirational. It is well-recognized that under those circumstances, the goal of self-sufficiency may never be achieved. (See *Morrison, supra*, 20 Cal.3d at pp. 451-453.) Accordingly, in the case of a long-term marriage such as this one, on a motion for

modification or termination of spousal support on the ground that the supported spouse has failed to make reasonable efforts, the court may consider anew whether self-sufficiency is a reasonable expectation. If the court determines that self-sufficiency is not feasible, for any reason other than lack of effort, the court may modify the support order as it deems appropriate to the circumstances. This may, in an appropriate case, include rescinding the *Gavron* warning all together.

All of the section 4320 factors we have discussed above are relevant to the central issue raised by the parties' motions, and the trial court's failure to consider those factors renders its order reducing spousal support an abuse of discretion. Because we have no way to assess how the court might have ruled if it had considered these factors, we must remand the matter to the trial court with directions to consider all of the applicable statutory factors, including but not limited to those we have discussed. (*Cheriton, supra*, 92 Cal.App.4th at p. 306.)

Loren contends that we must accept the trial court's statement that it had weighed and considered all of the relevant statutory factors. We disagree. On a silent record, we are required to presume that the court fully discharged its duty to consider and apply all of the relevant statutory factors and to presume that the court made all of the findings necessary to support its decision. (*Aninger*, *supra*, 220 Cal.App.3d at p. 238; *Border Business Park, Inc. v. City of San Diego* (2006) 142 Cal.App.4th 1538, 1550 [Fourth Dist., Div. Two], and cases cited therein.) Where the record reflects what the court actually did, however, these presumptions do not apply. (*Border Business Park, Inc. v.*

City of San Diego, supra, at p. 1550.) Rather, an appellate court may, and indeed must, examine the trial court's explanation of its decision in order to review the court's exercise of discretion in setting spousal support. (See, e.g., *Cheriton, supra,* 92 Cal.App.4th at pp. 305-306; *In re Marriage of Geraci* (2006) 144 Cal.App.4th 1278, 1297-1299; *In re Marriage of McTiernan & Dubrow* (2005) 133 Cal.App.4th 1090, 1106-1108.) Here, the record is not silent; on the contrary, the court gave a detailed analysis of the factors it deemed relevant and the evidence it considered in reaching its decision.

Loren also contends that a court may not "remake" the parties' agreement. We agree, of course, that where there is a marital settlement agreement or a stipulation for judgment, the courts must give effect to the parties' intent and reasonable expectations as expressed in the agreement. (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 398, 399, citing *Aninger, supra,* 220 Cal.App.3d at p. 238.) Here, however, although the parties expressed an expectation, via the stipulated *Gavron* warning, that Jane would use reasonable efforts to become self-supporting, they also agreed, without limitation, that spousal support could be modified by order of the court. In this respect, their stipulation necessarily rests on the understanding that requests for modification will be submitted to the court's discretion, and that in exercising that discretion, the trial court must consider and apply the same factors it would apply in making an initial award of support. (*In re Marriage of Shaughnessy, supra,* 139 Cal.App.4th at p. 1235.) Consequently, it would not constitute "remaking" the agreement to determine either that Jane made a reasonable decision not to pursue teaching in favor of pursuing her home business or even that, given

the point in her life at which Jane began the effort to become self-sufficient, it is not reasonable to expect that she will ever fully achieve that goal.

Because we have determined that the court abused its discretion by reducing Jane's spousal support without considering the relevant factors in light of the evidence presented, we necessarily conclude that the court did not abuse its discretion by merely reducing her support rather than terminating it, as Loren argues in his cross-appeal.

DISPOSITION

The judgment is reversed, including the award of attorney fees, and the matter is remanded for further proceedings on the motion to modify spousal support. The trial court is directed to consider, weigh and apply all of the relevant statutory factors in determining an appropriate award of spousal support, including but not limited to those discussed herein. The trial court shall determine an appropriate award of attorney fees.

Appellant Jane Lillestrand is awarded costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ McKinster
J.

We concur:

/s/ Ramirez
P.J.

/s/ Hollenhorst
J.